

**EXHIBIT 16**



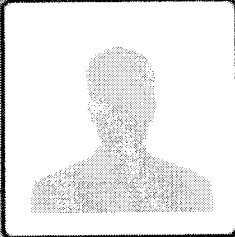
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Info



**Unknown Caller**

December 11, 2012 16:05:19

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**EXHIBIT 17**



**ORIGINAL**

TRANSCRIPT OF TAPE-RECORDED  
VOICEMAIL  
DECEMBER 11, 2012

IN THE CASE OF  
HOME GAMBLING NETWORK, INC. AND MEL MOLNICK VS.  
CHRIS PICHE, ET AL.

JOB NO.: 195709-B

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11/12/13 11:00 AM 11/12/13 11:00 AM 11/12/13 11:00 AM 11/12/13 11:00 AM 11/12/13 11:00 AM

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FEMALE: Hi, Chris. This is Sana Torres [ph]. Um, I called -- talked to you earlier this morning and I'm trying to get a hold of you.

Um, I guess I'll try back in a little bit and hope, uh, your meeting went well. I'll talk to you soon. Thanks. Bye.

I, Chris Naaden, a transcriber, hereby declare under penalty of perjury that to the best of my ability the above 2 pages contain a full, true and correct transcription of the tape-recording that I received regarding the event listed on the caption on page 1.

I further declare that I have no interest in the event of the action.

November 15, 2013

Chris Naaden

x 

(Voicemail, 12/11/12)

**EXHIBIT 18**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
LAS VEGAS, NEVADA

HOME GAMBLING NETWORK, INC., )  
et al., ) CASE No. 2:05-CV-0610-DAE-VCF  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
CHRIS PICHE, et al., )  
 )  
Defendants. ) Las Vegas, Nevada  
 ) December 11, 2012  
 ) 10:08:03 a.m.  
And related cases and parties)

**EVIDENTIARY HEARING**

THE HONORABLE CAM FERENBACH PRESIDING  
MAGISTRATE JUDGE OF THE U.S. DISTRICT COURT

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

2:05-CV-0610-DAE-VCF	Home Gambling v. Piche	12/11/12	<b>Evidentiary Hearing</b>
NW TRANSCRIPTS, LLC - Nevada Division			
P.O. Box 890			
Nampa, Idaho 83653-0890			
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WITNESS and EXHIBIT INDEX

Witnesses

WITNESSES FOR THE PLAINTIFFS:

PAGE #

None.

WITNESSES FOR THE DEFENDANT:

SERGEY SVERCHKOV

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\* \* \* \* \*

Exhibits

EXHIBITS FOR THE PLAINTIFF:

ADMITTED

None.

EXHIBITS FOR THE DEFENDANT:

None.

\* \* \* \* \*

2:05-CV-0610-DAE-VCF

Home Gambling v. Piche

12/11/12

**Evidentiary  
Hearing**

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1 LAS VEGAS, NEVADA TUESDAY, DECEMBER 11, 2012

2 PROCEEDINGS BEGAN AT 10:08:03 A.M.

3 \* \* \* \* \*

4 THE COURT: Good morning. Please be seated.

5 THE CLERK: This is the time set for an evidentiary  
6 hearing in 05-Civil-610-DAE-VCF, Home Gambling Network, Inc.,  
7 et al, versus Chris Piche, et al.

8 Counsel, please note your appearances for the  
9 record.

10 MR. LEACH: Your Honor, Sid Leach for the  
11 plaintiff. And seated next to me at counsel table is our  
12 expert, Dr. Sam Alapati.

13 THE COURT: Mr. Alapati. Okay. Thank you, Mr.  
14 Leach.

15 MR. MARQUIZ: And Your Honor, good morning. Craig  
16 Marquiz, also on behalf of plaintiffs. And in the courtroom  
17 is our company representative's son who -- representative --  
18 this is Jessie Molnick --

19 THE COURT: Oh.

20 MR. MARQUIZ: -- couldn't be here today, but we  
21 have his son here today on his behalf.

22 THE COURT: Thank you. Thank you. All right. So  
23 you have a court reporter. Welcome.

24 MR. MARQUIZ: We do, Your Honor. Let me put one  
25 thing on the record.

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1 THE COURT: Okay.

2 MR. MARQUIZ: Dr. Alapati is hearing impaired so we  
3 have a court reporter doing real time so that he'll be able  
4 to not only hear but also see visually on the screen what  
5 people are saying today.

6 THE COURT: Okay. And we'll all try to speak up  
7 too, Mr. Alapati.

8 MR. REYNOLDS: Your Honor, Jacob Reynolds from the  
9 law firm of Hutchison & Steffen.

10 THE COURT: Okay.

11 MR. REYNOLDS: With me is Philip Kantor.

12 THE COURT: Mr. Kantor. Yes.

13 MR. REYNOLDS: And next to us is Sergey Sverchkov  
14 from Belarus.

15 THE COURT: Mr. Sverchkov, welcome.

16 MR. REYNOLDS: Chris Piche, one of the defendants,  
17 is here --

18 THE COURT: Mr. Piche.

19 MR. REYNOLDS: -- as well as Daniella Camacho.  
20 She's an employee --

21 THE COURT: Ms. Camacho.

22 MR. REYNOLDS: -- of the defendant Entity.

23 THE COURT: All right. Thank you.

24 Okay. So I've reviewed Judge Ezra's order of, I  
25 hate to say May 14<sup>th</sup>, 2012. And I -- this has just been a

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1 difficult case, being as I wasn't involved at the beginning  
2 and trying to get a handle on exactly what's expected, and  
3 really sort of novel circumstances.

4 But it's clear that the Judge ordered this matter  
5 remanded for a new evidentiary hearing. And in reviewing  
6 matters, I note in a joint prehearing statement, which was  
7 filed on July 18<sup>th</sup>, 2012, the parties agreed on this statement  
8 of the issues. So I think that's going to be helpful. We'll  
9 have the issues at least agreed to, and I'll just read them  
10 into the record.

11 (A) was: "Did the defendants fail to produce the  
12 database as ordered by the court?"

13 "(B) if yes, was defendants' failure to do so  
14 intentional, willful, or in bad faith?"

15 And then, "(C), are terminating sanctions  
16 appropriate?"

17 So those are the issues I'm faced with. I'm to  
18 consider evidence again and to decide this. And the reason  
19 we're doing another evidentiary hearing, as I understand it  
20 is, during the objection more evidence was proffered on both  
21 sides and then at the hearing more evidence was proffered.

22 And so the Judge recognized, Judge Ezra that  
23 Magistrate Judge Leavitt didn't have that evidence at the  
24 time of his decision, so the remand is for me to consider  
25 this evidence.

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1 very clear about this, and I think this Court has been very  
2 clear about this, we were going to use what was in the  
3 record and just go over what's in the record. And Your  
4 Honor wanted a visual presentation of what we've already  
5 submitted so that you can do a finding of fact on evidence  
6 and that's what we've come prepared to do today. Mr.  
7 Sverchkov is just going to go through his report line by  
8 line.

9 THE COURT: That would be -- let me see here, is  
10 that --

11 MR. REYNOLDS: It's Document 264.

12 THE COURT: 265-4.

13 MR. REYNOLDS: 265-4.

14 THE COURT: Okay. I've got that.

15 MR. REYNOLDS: And it's Exhibit 7 to that document.  
16 Just goes line by line. And then show through the record the  
17 different reports that were run based on that, and different  
18 reports that Mr. Beall ran, based on with users12 offline,  
19 what errors he got. And we can show -- we can duplicate  
20 those errors. We take users12 offline, duplicate the  
21 errors, show the account is the same, put it back online,  
22 show the difference, no errors, and the different count.  
23 And that's what we came prepared to do because that is solely  
24 considering the evidence already in the record.

25 What I also want to do, Your Honor, is we're

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1 prepared to move today to exclude Mr. Alapati from these  
2 proceedings entirely because my understanding that the  
3 reason he was going to be coming was not to be an additional  
4 expert. That goes completely contrary to the district  
5 courts -- district court's order saying it was clear at the  
6 hearing this is not an opportunity for the parties to procure  
7 additional experts.

8 Mr. Beall is available. We have proved that today.  
9 We've had a private investigator -- a private investigator  
10 follow him yesterday. He went home, he arrived at 5 o'clock  
11 at his house. This morning she set an appointment with him  
12 to meet with him this afternoon. He is available. And for  
13 his not to be here is telling, because he had a full and fair  
14 opportunity to respond to our expert report.

15 Counsel says they need -- they need another  
16 opportunity. They need a fair opportunity to respond to  
17 Sergey Sverchkov's report. That's false at this time.

18 The District Court Judge, Judge Ezra, cured any  
19 concern there because he accepted Chris Beall's rebuttal  
20 expert report at the hearing six months after Sergey  
21 Sverchkov's report was recognized by them in the record.

22 So they already have a declaration in the record  
23 that the district court accepted and said okay, here's the  
24 final rebuttal. That's it. And he closed -- he accepted  
25 that document, a rebuttal expert report. It's called

1 rebuttal declaration from Chris Beall, their expert. And  
2 the Court said I'm going to accept this, nothing more.

3 And to bring in another expert, who we never  
4 deposed, never met, never examined, is highly prejudicial to  
5 us. We have no idea what he's going to say today.

6 THE COURT: Okay. Anything else?

7 MR. REYNOLDS: Just move to exclude him.

8 THE COURT: All right.

9 MR. REYNOLDS: We're going to be going off -- over  
10 sealed documents in this case. We have a protective order in  
11 this case. We want -- we want the hearing sealed.

12 THE COURT: All right. Okay.

13 Well, let me hear from Mr. Leach.

14 MR. LEACH: Your Honor, I think that what the  
15 defendants are trying to do, it's very important for them if  
16 -- that we not be allowed to point out to the Court that what  
17 their expert is going to say to you today is false, and we  
18 believe it is false.

19 I don't think that Judge Ezra envisioned that you  
20 would conduct an evidentiary hearing and the defendants would  
21 be allowed to present evidence to you that was not true, and  
22 we wouldn't have an opportunity to rebut them.

23 Mr. Alapati is not an additional expert. He's a  
24 replacement expert. He's the only expert we've got.

25 And Mr. Beall is involved in running a company.

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1 He's responsible for it. It's a closely held software  
2 development company, and he doesn't have the time to get  
3 prepared for the hearing or to show up here today. He  
4 basically works online from his house and he's -- he told me  
5 there's no way that he could devote the time to get ready to  
6 be prepared to come here today, so. We --

7 THE COURT: Well, are you still relying on Mr.  
8 Beall's report that it --

9 MR. LEACH: No. Well, no we're --

10 THE COURT: -- to the extent it's in the record?

11 MR. LEACH: Well, I think that it -- that Mr.  
12 Alapati would say the same thing that Mr. Beall said.

13 THE COURT: All right.

14 MR. LEACH: So we're not saying that Mr. Beall's  
15 -- whatever evidence that we've got from him should be  
16 disregarded, simply that Mr. Alapati verifies everything  
17 that he said. And to the extent we need to rebut these --  
18 what they're going to show you today, we're prepared to have  
19 Mr. Alapati do that. But he's not going to say something --  
20 anything different from what Mr. Beall said.

21 THE COURT: All right. Well -- okay. Hold on.

22 Yes, Mr. Reynolds?

23 MR. REYNOLDS: Your Honor, here's a significant  
24 problem. We -- before the first evidentiary hearing we asked  
25 to depose Mr. Beall before we had an evidentiary hearing, and

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1 we were denied the request. So we showed up -- and that's  
2 the first time that we learned he wasn't Oracle database  
3 certified. That's the first time we learned he hadn't  
4 prepared a database in ten years. He hadn't copied a  
5 database in ten years.

6 Now if Mr. Alapati's going to testify to those same  
7 facts, then great, let's put him up there. But there's a  
8 reason they didn't bring Mr. Beall today.

9 THE COURT: All right. Well, I hear your  
10 argument.

11 MR. REYNOLDS: And it's because he's not an  
12 expert.

13 THE COURT: But if --

14 MR. REYNOLDS: And --

15 THE COURT: Sorry, go ahead.

16 MR. REYNOLDS: And that's the problem with this  
17 case, Your Honor, is a competent person with these competent  
18 Oracle database administrator, Oracle certified database  
19 administrator would have solved this problem without all of  
20 this expense today. And that's what our report -- that's what  
21 Sergey Sverchkov's report responds to.

22 The second point, Your Honor, and I don't want it  
23 overlooked. Their continual claim that they need to be able  
24 to rebut what Sergey Sverchkov's going to say today, please  
25 remember that what we are going to do is just go through his



1 THE COURT: -- p.m. Or no, 3:51.

2 MR. LEACH: And that would be 2011, right?

3 THE COURT: 2012. 2012.

4 MR. LEACH: 12, oh, oh, right, right, okay, 2012.

5 THE COURT: Yeah, I didn't become a judge till  
6 October 2011.

7 MR. LEACH: All right.

8 THE COURT: So I know it was after that, okay.

9 MR. REYNOLDS: Your Honor, did we get an exact date  
10 on the due -- the date of the brief so it is --

11 THE COURT: What's today?

12 MR. REYNOLDS: Can't remember if you said 7 or 8  
13 days.

14 THE COURT: Well, I said 8 -- but I was thinking 8  
15 pages. A week.

16 MR. REYNOLDS: Okay.

17 THE COURT: So let's --

18 THE CLERK: You said a week.

19 THE COURT: What's today?

20 THE CLERK: Today's the 11<sup>th</sup>.

21 MR. REYNOLDS: Today --

22 MR. SVERCHKOV: Today's Tuesday, the 11<sup>th</sup>.

23 THE COURT: The 11<sup>th</sup>. Okay, the 18<sup>th</sup>.

24 MR. REYNOLDS: 18<sup>th</sup>?

25 THE COURT: Yeah, get it in by 4:00 on the 18<sup>th</sup>

1 please.

2 MR. REYNOLDS: 4:00 p.m. Okay.

3 (Off-record colloquy)

4 THE CLERK: Okay, Court is adjourned.

5 PROCEEDINGS CONCLUDED AT 4:06:07 P.M.

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